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C O N F I D E N T I A L SECTION 01 OF 03 COLOMBO 001049

SIPDIS

DEPARTMENT FOR SCA/INS AND DRL/NESCA

E.O. 12958: DECL: 11/20/2018

TAGS: PGOV PHUM PTER PREL CE

SUBJECT: SRI LANKA: TERRORISM TRIAL OF JOURNALIST  
TISSAINAYAGAM REACHES CRITICAL PHASE

REF: A) COLOMBO 280 B) COLOMBO 686 C) COLOMBO 767  
D)COLOMBO 801 E) COLOMBO 815

Classified By: AMBASSADOR ROBERT O. BLAKE, JR. REASONS: 1.4(b,d).

¶1. (SBU) SUMMARY: The trial on terrorism charges of journalist J.S. Tissainayagam has entered a critical phase. The testimony in the case has not gone well for the government, with the officer who took Tissainayagam's confession conceding errors. The Judicial Medical officer who examined Tissainayagam's colleagues, arrested at the same time, confirmed that the pair had been tortured in detention.

The presiding judge will hear final oral presentations on November 21 concerning the admissibility of the journalist's "confession" while in detention at the Terrorism Investigation Division. She is expected to rule within two weeks whether the confession may be used in the trial. If the confession is thrown out, the prosecution's already weak case could be fatally undermined, but the trial could still drag on. Ambassador has intervened with senior Sri Lankan officials several times in recent days, advocating better conditions of detention for the defendant, and a speedy and impartial trial. U.S. and EU diplomats visited Tissainayagam in detention on November 20. Tissainayagam reported that international pressure in his case had been helpful, but expressed continued doubt that his trial would be fair. End summary.

¶2. (C) Tissainayagam's wife Ronnate told Pol Chief on November 14 that an international group of media organizations (Reporters without Borders, International News Safety Institute, International Media Support and the International Federation of Journalists) had an audience with Sri Lankan President Mahinda Rajapaksa on October 28. The media representatives asked Rajapaksa why the journalist was being tried for exercising his profession. Rajapaksa countered that Tissainayagam was being tried for terrorist activities. The journalists responded by showing the President the charges. Rajapaksa claimed that he had done Tissainayagam a favor by directing the Attorney General to charge him. Otherwise, he said, Tissainayagam would probably still be in indefinite detention at the Terrorism Investigation Division (TID). Rajapaksa reportedly told them he had personally directed the Attorney General not to grant

bail in the case, since "the case will only take five days." Following their visit, Reporters Without Borders issued a statement on behalf of the "international press freedom mission" stating that this case represents the first time in a democratic country that a journalist has been tried under terrorism laws because of his writings.

¶ 13. (C) According to Ronnate Tissainayagam, the presiding judge held a conference in chambers with the prosecution and defense attorneys on October 30. The Attorney General's representative said that he was ready to rest his case. The judge informed both lawyers that the President had called her personally and demanded that the case be resolved soon, "and in my best interest." Further, she told the defense attorney that she would ignore any interventions by his junior colleague (a Tamil) because "I don't like this Tamil lawyer."

¶ 14. (C) A respected senior attorney, former Member of Parliament and retired diplomat, Mangala Moonesinghe, told Ambassador on November 18 that the charges listed against Tissainayagam are not offenses under the Sri Lankan Penal Code or any other Sri Lankan law. On that basis alone, he felt, the case would have to be dismissed. Further, he said, the circumstances of the collection of the so-called "confession" were such that it was almost certainly inadmissible. However, even if the confession were thrown out, the trial might not end immediately but would still have to run its course.

¶ 15. (U) The "confession," which we have seen, appears to be

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merely an account of how Tissainayagam raised and spent money to support the publication of the magazine. When Tissainayagam took the stand recently testimony, he alleged that the Terrorism Investigation Division had extracted the confession by applying significant pressure. The officer who took the confession damaged the government's case with his testimony, saying that he had not realized the document would come to be so important. If he had realized it, he said, then he would have been more careful, but in fact errors had crept in when he recorded it. Under cross-examination, he responded to a series of questions by saying repeatedly, "I don't know."

¶ 16. (U) Tissainayagam, in three days of testimony, asserted that he had been put under duress and was also forced to witness the physical abuse of the two defendants in the case linked to his, that of publisher N. Jesiharan and his wife. The prosecution argued that Tissainayagam had concocted this story. Tissainayagam's legal team sought to introduce the report of the Judicial Medical officer on his examination of the alleged torture victims introduced as an exhibit to corroborate his statement, but the judge (without giving a reason) would not admit it as evidence. Instead, the medical officer was called as a witness. On the stand, he testified that the Jesiharans were, in fact, tortured by the Terrorism Investigation Division - but claimed he could not state with any precision whether this had occurred on the date Tissainayagam alleged, or two weeks earlier.

¶ 17. (SBU) Ambassador wrote to his Sri Lankan counterpart in Washington, Jaliya Wickremasuriya, on November 19, saying that he hoped Wickremasuriya could help persuade the GSL that it was in its own best interest to bring the case to a rapid conclusion and release Tissainayagam. Ambassador suggested that if the confession were obtained under duress, then the prosecutors could withdraw the case on the basis of a simple error in police procedure, without conceding defeat on the merits of the case. Ambassador noted that the U.S. Embassy would probably be able to welcome such a development as an example of how the Sri Lankan justice system functions, and was confident that the EU and international human rights bodies would also recognize this as a positive outcome for Sri Lanka.

¶ 8. (SBU) Embassy received reports on the evening of November 19 that Tissainayagam had been moved without warning to a nearby maximum-security prison run by the army to detain suspected LTTE terrorists. Tissainayagam's wife and legal team were concerned that he might be exposed to harm at the hands of dangerous Sinhalese criminal suspects detained at the same facility. According to the reports, over 140 men were being held in one large holding cell.

¶ 9. (SBU) Ambassador contacted that same evening the President's brother and senior advisor, Basil Rajapaksa (with whom he had already spoken several times about Tissainayagam's case) to express concern about the move to the high-security prison and the possibility he might be mistreated. Ambassador also noted the high level of concern within the U.S. administration and the Congress about this case. Basil Rajapaksa reported the following morning that he had been in touch overnight with Justice Secretary Gamalath to assure acceptable conditions for Tissainayagam's detention. Ambassador renewed the request to Rajapaksa to ensure Tissainayagam was well treated. Ambassador added that the case should receive expedited consideration by the courts so that in the event of an acquittal the journalist could be speedily released.

¶ 10. (SBU) Ambassador also spoke on November 20 to Human Rights Minister Mahinda Samarasinghe, who responded with some surprise to the news of Tissainayagam's removal to the high-security prison. Samarasinghe noted he had visited the journalist in remand custody on November 17, in the company

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of attorney Mangala Moonesinghe, specifically to check on Tissainayagam's health and welfare. However, Samarasinghe later reported back that he had confirmed the transfer. Samarasinghe noted that Tissainayagam had not been singled out, but was part of a group of 75 Tamil political detainees.

The General Commissioner of Prisons had told him this was for the detainee's security "because of the situation in the north and concerns they might be mistreated by other prisoners." Samarasinghe undertook to send one of his own staff to check on Tissainayagam's conditions of detention.

¶ 11. (SBU) Embassy Pol Chief and the EU Commission's recently-arrived human rights officer later visited Tissainayagam in the high-security prison on November 20. Tissainayagam expressed his appreciation of our concern. He said that as of that morning, he and 74 other Tamil political prisoners had been held in one lock-up with more than 70 other, mainly Sinhalese, criminal suspects. The cell was overcrowded and lacking in proper water and sanitation facilities for so many prisoners. He said the main fear of the Tamil "LTTE suspects" was that the Sinhalese criminal detainees might harm them - something that has been reported in Sri Lankan prisons in the past. He thanked us for our help, saying that because of U.S. and international pressure, he felt, the prison warden had agreed to relocate the criminal suspects to another holding area, provide another water tap for washing and pledged to keep the two toilets clean. Tissainayagam told us that as a result of the improvements, the conditions of his detention were now no worse than in the remand prison. He said he looked forward to his next court appearance on November 21.

¶ 12. (C) COMMENT: Post is sharing the task of monitoring the trial with other missions. (The Dutch Embassy covered the trial on November 5; the junior diplomat at the EU delegation has recently attended five sessions.) Final oral presentations and written submissions on the admissibility of the confessions are due in court on November 21. However flimsy the government's case may be, the definition of offenses under the Prevention of Terrorism Act is extraordinarily broad. We welcome the fact that the government is seeking to expedite the hearing of this case, but are also concerned that the hand-picked judge in the case may be reluctant to issue a judgment that would embarrass the

government. We have received multiple well-sourced and credible reports of political interference at the highest level in the conduct of this trial. Tissainayagam, his wife, and his legal team have reason to doubt that the impartiality of the proceedings is assured. If found guilty, he could receive a sentence of up to twenty years. For the moment, international pressure to guarantee a fair trial seems to be having a positive impact. Embassy will continue to use every opportunity to press the government to allow a just and speedy resolution of this high-profile case.

Blake